

**Selected Documents from Claim File**

**Claim No. LRF-1998-0130-02**

## CLAIM PAYMENT CHECKLIST

### I. General Information

LRF Claim No: <u>LRF-1998-0130-02</u>	Related Claim Nos: <u>None</u>
1. Claimant: Name: <u>Anderson Lumber</u> Address: <u>P.O. Box 9459, 4700 Harrison Blvd.</u> City, State, Zip: <u>Ogden, UT 84409</u> Telephone: <u>(800) 333-3345</u> DOPL/LRF No: <u>95-314987-0000</u>	
2. Claimant's Legal Counsel: Name/Law Firm: <u>Clair J. Jaussi, Clair J. Jaussi, Attorney at Law</u> Address: <u>P.O. Box 2282, 15 North 100 East, Suite 101</u> City, State, Zip: <u>Provo, UT 84603</u> Telephone: <u>(801) 374-5566</u>	
3. Non-Paying Party/Permissive Party: (Entered Appearance <u>Yes</u> <input checked="" type="checkbox"/> <u>No</u> ) Name: <u>James D. Cannon, d/b/a/ Cannon Construction</u> ALS: Address: <u>573 North Adams Avenue</u> <u>1136 12TH STREET</u> City, State, Zip: <u>Ogden, UT 84404</u> <u>OGDEN UT 84404</u> Telephone: <u>(801) 737-9633</u> DOPL No: <u>93-270048-5501</u>	
4. Non-Paying Party/Permissive Party's Legal Counsel: Name/Law Firm: <u>Bill Thurman, McKay, Burton &amp; Thurman</u> Address: <u>600 Gateway Tower East, 10 East South Temple Street</u> City, State, Zip: <u>Salt Lake City, UT 84133-1102</u> Telephone: <u>(801) 521-4135</u>	
5. Amount claimed: <u>\$42,237.98</u>	
6. Owner: Name: <u>Bryce Whitaker and Cindy Whitaker</u> Address: <u>365 North 100 West</u> City, State, Zip: <u>Kanosh, UT 84637</u> Telephone: <u>Unknown</u>	

7. Owner-Occupied Residence:

Address/Location: 365 North 100 West, Kanosh, UT 84637

Legal Description:

**Parcel 1:** Beginning 288.42 feet West and 2 chains North of the Southeast corner of the Northwest quarter of Section 17, Township 23 South, Range 5 West, Salt Lake Base and Meridian, thence North 192.06 feet; thence West 176.89 feet; thence South 192.06 feet; thence East 176.89 feet to the point of beginning.

**Parcel 2:** Beginning 2 chains North and 465.31 feet West of the Southeast corner of the Southwest quarter of Section 17, Township 23 South, Range 5 West, Salt Lake Base and Meridian, thence North 192.06 feet; thence West 281.15 feet; thence South 192.06 feet; thence East 281.15 feet to the point of beginning.

TOGETHER WITH all rights, privileges, easements, rights of way, improvements and appurtenances thereunto belonging or in any way pertaining thereto.

SUBJECT TO covenants, conditions, restrictions, reservations, easements, and rights of way of record.

3. Non-Paying Party/Permissive Party: (Entered Appearance ☐ Yes ☒ No)

Name: James D. Cannon, d/b/a/ Cannon Construction ALS: \_\_\_\_\_

Address: 573 North Adams Avenue 1136 12TH STREET

City, State, Zip: Ogden, UT 84404 OGDEN UT 84404

Telephone: (801) 737-9633 DOPL No: 93-270048-5501

9. Claim Classification: ☐ Formal ☒ Informal

## II. Claim Processing Information

Initial Claim Processing -- All Claims:	Received	Forwarded
Front Desk	01/30/98	01/30/98
LRF Specialist--set up file, notice of filing, CRIS entry	02/04/98	02/04/98
Permissive Party response Deadline: <u>03/02/98</u>	02/06/98	NONE

LRF Specialist/Claims Examiner–screening, c/d letter Reason(s) for conditional denial: <u>Claimant has failed to submit supporting documents as follows: 1) Affidavit by original contractor evidencing payment by owner, civil finding on that issue, or affidavit by claimant that he was not able to obtain such original contractor affidavit together with independent evidence--the owners' affidavit that they paid the original contractor is self-serving, and 2) claimant has not submitted a copy of the building permit on this residence.</u>	02/06/98	05/07/98
LRF Coordinator–review of c/d letter	05/07/98	05/08/98
Claimant--response to c/d letter Deadline: <u>06/08/98, 06/22/98 claimant requested change to formal hearing/subpoenas due to homeowner noncompliance, but pending that process, on 7/7/98, claimant submitted documentation.</u>	05/08/98	07/07/98
Claims Examiner–review of response. Reason(s) for conditional denial: <u>Claimant still has insufficient evidence of full payment, the homeowner affidavit is self serving.</u>	07/07/98	07/09/98
Claimant response to c/d letter Deadline: <u>08/17/98</u>	07/16/98	08/14/98
LRF Coordinator review	08/14/98	08/14/98
Subpoena Requested/Request for Conversion/Request for Reconsideration Deadline for return of subpoena: <u>08/29/98, extension to 9/8/98, but explained to claimant's attorney that no further extensions would be granted without a stipulation in place regarding payment of interest.</u>	08/19/98	10/16/98

<p><u>After LRF sent Jaussi the informational packet regarding subpoenas and conversion, Jaussi's response was a Request for Conversion to Formal Claim dated 9/2/98. Upon review of that request, Enforcement Counsel Ray Walker asked for additional information. Jaussi was contacted by telephone on 9/22/98 and he informed that he has attempted to modify the Default Judgment to include a finding of full payment, but has been told by the court that would be a violation of the bankruptcy filing. He indicated he would submit that documentation to the Division, along with the documents submitted by Cannon Construction to the bankruptcy court showing that the Whitakers are not listed on Cannon's accounts receivable.</u></p> <p><u>However, on 10/16/98, Jaussi submitted a Motion for Reconsideration by Presiding Officer. The Presiding Officer has not considered this claim, and cannot reconsider it. The motion is moot at this point, as the section, through the advice of Enforcement Counsel Ray Walker and AAG Tony Patterson, and based upon the bankruptcy court documents submitted, has decided to recommend this claim for payment.</u></p>		
LRF Claims Examiner/Coordinator review	10/16/98	10/19/98

Section's Recommended Disposition:

\_\_\_ Approve for full payment X Approve for partial payment \_\_\_ Deny \_\_\_ Dismiss

Date: 10/20/98

Reason(s): Full payment by the owners to the original contractor has been a big concern in this claim. Through various requests by the Division for additional documentation on this issue, claimant submitted satisfactory evidence that the original contract price was \$60,000, and that the original contractor was paid \$50,000. The section's concern has been the remaining \$10,000. Claimant indicates that the homeowners paid approximately \$13,000 directly to subcontractors, suppliers and laborers, and claims this is sufficient to show that the remaining \$10,000 was paid.

The problem with the evidence supporting the claim of \$13,000 paid by the homeowners is that no affidavits were obtained from these subcontractors, suppliers and laborers indicating they were paid for work performed on this residence. Claimant submitted the homeowners checks to various individuals and entities, along with some invoices for services and/or products. However, where copies of invoices have not been submitted, the section has no way of confirming the identity of some of these individuals and whether they performed services on the subject residence.

On 10/16/98, claimant submitted additional documentation regarding the full payment issue, including the Statement of Financial Affairs from Cannon Construction's Bankruptcy case---the Whitakers were not listed as owing Cannon money on the accounts receivable listing. In addition, the closing statement on subject residence indicates approximately \$4,200 paid by the homeowners to third parties Homeglo, Inc, Carling, and G & G Excavating, which amounts have not previously noted as direct payments by the owners.

After review of the complete file, Enforcement Counsel Ray Walker, Asst. Attorney General Tony Patterson, and the section recommend that this claim should be paid in the interest of economy to the Fund (such as additional attorneys fees and interest being incurred). Although the evidence is not perfect on the full payment issue, we believe that the totality of the evidence demonstrates that the homeowners paid in full for the construction of the residence. Further, it appears that claimant has made reasonable efforts to produce the necessary documentation, and pursuant to R156-38-204a(9), the section may elect to accept the evidence submitted by claimant.

Board's Recommended Disposition--INFORMAL CLAIM:

☐ Approve for full payment ☒ Approve for partial payment ☐ Deny ☐ Dismiss

Date: 10/21/98

Reason(s): **The Board conditionally approved this claim. The Board members said that they would consider payment by the homeowners directly to third parties and subcontractors as payment in full if the original contract required the original contractor to make those payments. However, the Board requested the section to do further research to determine if the amounts paid by the homeowners were the original contractor's responsibility.**

**11/17/98: Further research by the section led to the homeowners obtaining a notarized statement from James D. Cannon, the non-paying party, in which he admitted that he was paid the full contract price for work done on the subject property. (Claim file, p. 92)**

FINAL ORDER--ALL CLAIMS:

☐ Approve for full payment ☒ Approve for partial payment ☐ Deny ☐ Dismiss

Date: 11/19/98

Reason(s): See reasons for Board's recommendations above.

If Order is approved for full or partial payment:

Payment amount: \$42,048.68

Date payment request forwarded to Finance: 11/19/98

Date notice of payment sent to non-paying party: 11/19/98 Order mailed to NPP

Deadline for non-paying party's reimbursement: No demand made due to NPP's bankruptcy filing.

Date claim referred for subrogation action: 11/19/98

Outcome of subrogation action: \_\_\_\_\_

Date non-paying party referred to Investigations: \_\_\_\_\_

Nature/outcome of disciplinary action: \_\_\_\_\_

If Order is fully or partially denied:

Reason(s) for denial: \$189.30 denied because post jmt interest was calculated to 10/21/98, date of Board approval.

Appeal deadline: 12/21/98

Date request for agency review filed: \_\_\_\_\_

Deadline for claimant's brief: \_\_\_\_\_

Deadline for Division's brief: \_\_\_\_\_

Date/Nature of Order: \_\_\_\_\_

### III. Jurisdiction Checklist

Y/N	Inits	Date	
YES	mam	05/07/98	<b>Is Application Jurisdictionally Sound?</b>
YES	mam	05/07/98	<p>A. Claimant brought civil action against the non-paying party within 180 days from the last day claimant provided qualified services, which action was to recover monies owed him for the services, or was precluded from doing so by the non-paying party's bankruptcy filing within 180 days of claimant's completion of qualified services. (38-11-204(3)(d)(i)(A) and (38-11-204(3)(e)). <u>Claimant states it provided qualified services from 6/7/96 through 10/10/96. (Claim file, pp. 2). Claimant filed civil action against the original contractor on 3/19/97, 160 days after it last provided services. (Claim file, pp. 23-27).</u></p>
YES	mam	05/07/98	<p>B. If civil action filing is required, notice of commencement of action was timely filed within 30 days of claimant's filing of civil action. (38-11-204(3)(d)(i)(B)) <u>Notice of Commencement of Action was filed with the fund on 3/25/97, 6 days after filing civil action. (Claim file, pp. 28-29).</u></p>
YES	mam	05/07/98	<p>C. Claim application was timely filed within 120 days of the civil judgment or bankruptcy filing. (38-11-204(2)). <u>A Default Judgment was entered by the Fourth Dist. Court on 12/2/97. (Claim file, pp. 30-31). This claim application was filed with the fund on 1/30/98, 59 days later.</u></p>

### IV. Complete Application Checklist

Y/N	Inits	Date	
INC INC	mam mam	08/14/98 05/07/98	<b>Is Application Complete?</b>
YES	mam	05/07/98	A. Form submitted. (38-11-204(1)(c))
YES	mam	05/07/98	B. Form completed. (38-11-204(1)(c))
YES	mam	05/07/98	C. Application fee submitted. (38-11-204(1)(b)) ICN No: <u>8033610075</u>
YES INC	mam mam	08/14/98 05/07/98	D. Supporting documents submitted. (38-11-204(1)(c))

YES	mam	05/07/98		1. Evidence of written owner contract (R156-38-204a(1))
YES	mam	05/07/98		a. Written contract between owner and original contractor/real estate developer; (R156-38-204a(1)(a)(i) and (ii)) or
n/a	mam	05/07/98		b. Civil judgment with appropriate findings. (R156-38-204a(1)(b)) or
n/a	mam	05/07/98		c. Affidavit that claimant was precluded from obtaining a copy of the contract <u>and</u> a civil judgment. and
n/a	mam	05/07/98		d. Independent evidence.
YES INC	mam mam	07/09/98 05/07/98		2. Evidence of building permit compliance: (R156-38-204a(2))
YES INC	mam mam	07/09/98 05/07/98		a. Building permit; (R156-38-204a(2)(a)) or
n/a	mam	05/07/98		b. Letter that building permit is not required. (R156-38-204a(2)(b))
YES	mam	05/07/98		3. Evidence of compliance with licensing statute: (R156-38-204a(3))
YES	mam	05/07/98		a. Original contractor is licensed; (R156-38-204a(3)) or
n/a	mam	05/07/98		b. Original contractor is unlicensed, and
n/a	mam	05/07/98		documentation of exemption from licensure; (R156-38-204a(3)) or
n/a	mam	05/07/98		c. Real estate developer.
INC INC	mam mam	08/14/98 05/07/98		4. Evidence that owner paid original contractor/real estate developer in full: (R156-38-204a(4))
n/a INC	mam mam	08/14/98 5/07/98		a. Affidavit from original contractor/real estate developer; (R156-38-204a(4)(a)) or

n/a INC	mam mam	08/14/98 05/07/98		b. Civil judgment with appropriate finding; (R156-38-204a(4)(b)) or
YES YES INC	mam mam mam	08/14/98 07/09/98 05/07/98		c. Affidavit that claimant was precluded from obtaining an affidavit or civil judgment, (R156-38-204a(4)(c)) and
INC INC	mam mam	08/14/98 05/07/98		independent evidence. (R156-38-204a(4)(c))
YES	mam	05/07/98		5. Evidence that claimant brought civil action against original contractor/real estate developer: (R156-38-204a(5))
YES	mam	05/07/98		a. Complaint, (R156-38-204a(5)(a)) and
YES	mam	05/07/98		Notice of Commencement of Action; (R156-38-204a(5)(b)) or
n/a	mam	05/07/98		b. Non-paying party's bankruptcy filing. (R156-38-204a(5)(c))
YES	mam	05/07/98		6. Evidence that non-paying party failed to pay claimant: (R156-38-204a(6))
YES	mam	05/07/98		a. Civil judgment with appropriate finding; (R156-38-204a(6)(a)) or
n/a	mam	05/07/98		b. Non-paying party's bankruptcy filing, (R156-38-204a(6)(b)) and
n/a	mam	05/07/98		Independent evidence. (R156-38-204a(6)(b))
YES	mam	05/07/98		7. Evidence that claimant made a reasonable attempt to collect the judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing: (R156-38-204a(7))
n/a	mam	05/07/98		a. Supplemental order, (R156-38-204a(7)(a)) and

n/a	mam	05/07/98		b. Return of service of supplemental order, (R156-38-204a(7)(b)) and
n/a	mam	05/07/98		c. If assets identified, Writ of Execution, (R156-38-204a(7)(c)) and
n/a	mam	05/07/98		d. If assets identified, Return of Execution; (R156-38-204a(7)(d)) or
YES	mam	05/07/98		e. Non-paying party's bankruptcy filing. (R156-38-204a(7)(e))
YES	mam	05/07/98		8. Evidence that the residence is an owner-occupied residence: (R156-38-204a(1)(a)(i) and (ii))
YES	mam	05/07/98		a. Owner-Occupied Residence Affidavit; (R156-204a(1)(i) and (ii)) or
n/a	mam	05/07/98		b. Evidence that claimant was unable to obtain an Owner-Occupied Residence Affidavit, and
n/a	mam	05/07/98		Independent evidence.
YES	mam	05/07/98		E. Signed Certification and Affidavit. (38-11-204(3)(e))
YES	mam	05/07/98		F. Completed Certificate of Service. (R156-38-105(5)) and (6))
YES	mam	05/07/98		G. Completed Demographic Questionnaire.

### V. Required Factual Findings

Y/N	Inits	Date	
INC INC	mam mam	08/14/98 05/07/98	<b>Does Claim Meet Findings Required Under § 38-11-203(1)?</b>
YES	mam	05/07/98	A. Claimant was a qualified beneficiary during the construction on the residence. (38-11-203(1)(a)) <u>LRF records indicate that claimant Anderson Lumber's effective date of registration with the fund is 01/01/95. Claimant provided qualified services for this residence from 6/7/96 through 10/10/96. (Claim file, p. 2)</u>

YES	mam	05/07/98	<p>B. Owner contracted with an original contractor for construction on the residence, or with a real estate developer for the purchase of the subject residence. (38-11-102(12)).</p> <p><u>A brief "Construction Contract" was executed between the homeowners and the original contractor on 4/1/96. (Claim file, p. 16). The contract states only the following: "James D. Cannon DBA Cannon Construction agrees to build a home for Bryce and Cindy Whitaker per attached plans and drawings on Whitakers lot at 365 North 100 West, Kanosh, Utah. The price for labor and materials is Sixty Thousand Dollars." (Claim file, 0. 16). Claimant has not submitted a copy of the "plans and drawings" for the residence. However, I believe the statutory requirement for a owner - contractor contract has been met by this contract, skimpy though it might be.</u></p>
YES	mam	05/07/98	<p>C. Owner entered into a written contract for qualified services with the original contractor/real estate developer. (38-11-204(3)(a))</p> <p><u>See notes in B. above.</u></p>
YES	mam	05/07/98	<p>D. Original contractor was licensed or exempt from licensure at time of contract. (38-11-204(3)(a)(i))</p> <p><u>Cannon Construction has been licensed since 12/28/93, is in good standing, and this license will not expire until 7/31/99. (ALS database). The contract between homeowners and Cannon Construction was executed on 4/1/96. (Claim file, p. 16).</u></p>
YES INC	mam mam	07/09/98 04/27/98	<p>E. Building permit was obtained if required. (38-11-204(3)(b))</p> <p><u>Claimant states in its application that a building permit was issued on 6/7/96. (Claim file, p.4). Although claimant has submitted a copy of the receipt from the Kanosh Town Treasurer for the building permit fee paid by the homeowner, claimant has not submitted a copy of the actual building permit on this residence</u></p> <p><u>07/09/98: Claimant submitted Kanosh Town Building Permit issued and approved 4/10/96. (Claim file, p. 44). Although it appears the application for the permit was not made until 6/7/96-- apparently the town of Kanosh backdated the issuance of the permit perhaps to date work was started--regardless, this permit meets the requirements of the Act.</u></p>

YES	mam	10/20/98	<p>F. Owner paid original contractor/real estate developer in full in accordance with the written contract and any amendments to it. (38-11-204(3)(c))</p> <p><u>Claimant has not submitted an affidavit from the original contractor acknowledging payment, nor a civil judgment with appropriate findings or an affidavit from the claimant stating he was precluded obtaining the contractor affidavit.</u></p> <p><u>The original contract price for construction of the residence was \$60,000.00 (Claim file, p. 16). Claimant has submitted the Settlement Statement of First American Title Company of Utah, which shows that the owners paid a total of \$73,000.00. (Claim file, p. 17). The problem is that the Settlement Statement does not state whether the Seller is James D. Cannon DBA Cannon Construction. In fact, it does not mention Cannon at all.</u></p> <p><u>07/09/98: In response to the conditional denial letter, claimant submitted the Affidavit of Bryce and Cindy Whitaker, stating that the Settlement Statement shows a pay-off of \$65,583.14 to Tom Summer, Mrs. Whitaker's uncle, for the \$60,000 Summers paid to Cannon Construction plus earned interest.(Claim file, pp. 37-38). Claimant's attorney also submitted an affidavit stating that he was precluded by Cannon Construction's bankruptcy filing from obtaining an affidavit of full payment from James Cannon. (Claim file, pp. 50-51) 07/15/98: Claimant submitted the Affidavit of Tom Summers, which states that he paid Cannon Construction \$60,000 for the construction of the Whitaker home, that he took a trust deed on the residence, and was later repaid by the Whitakers. (Claim file, p. 59) 08/14/98: Claimant submitted the personal checks (endorsement side included) of Tom Summers, to Wells Cannon of Cannon Construction, totaling \$50,000, and a check for \$10,000 to Cindy Whitaker. (Claim file, pp. 66-69). Claimant also submitted the Whitakers' checks to Chuck Cannon of Cannon Construction, totaling \$5,027.04, and \$5,196.90 in checks to subcontractors, along with First Security Bank Account Statement confirming the transfers. (Claim file, pp. 70-78).</u></p>
INC	mam	08/19/98	
INC	mam	07/09/98	
INC	mam	05/07/98	

		<p><u>This accounting slightly differs from the earlier affidavits of Bryce &amp; Cindy Whitaker, and Tom Summers. The payments by the Whitakers are not supported by invoices from the various laborers and third parties. Also, most of these individuals are not licensed by DOPL. The Whitakers also claim as part of the \$10,000 they supposedly paid to third parties, the Kanosh Town building permit. We cannot determine from the contract in this case if that was part of the contractor's responsibilities. If it was the owner's responsibility, then it should not be included in the \$10,000 claimed by the owners as part of the original contract price.</u></p> <p><u>8/19/98: I have discussed my concerns regarding the independent evidence with attorney Clair Jaussi. He indicated a subpoena issued to the original contractor would be his preference to complete this claim. 10/19/98: After sending Jaussi the forms for subpoenas/conversion to formal hearing, Jaussi requested conversion. When Ray Walker reviewed the request, he asked for additional information such as whether Jaussi had attempted to obtain a modified judgment in the civil court. I discussed that with Jaussi by telephone, and he informed that he had made such an attempt but was informed that would be a violation of the bankruptcy law. He stated he would provide that documentation to our office. On 10/16/98, we received Jaussi's Motion for Reconsideration, asking the Division to reconsider claimant's evidence regarding payment in full by the homeowner pursuant to R156-38-204a(9). Along with the Motion, claimant submitted additional documentation regarding the full payment issue, including the Statement of Financial Affairs from Cannon Construction's Bankruptcy case---the Whitakers were not listed as owing Cannon money on the accounts receivable listing. In addition, the closing statement on subject residence indicates approximately \$4,200 paid by the homeowners to third parties Homeglo, Inc, Carling, and G &amp; G Excavating, which amounts have not previously noted as direct payments by the owners. We believe the totality of the evidence shows owners paid in full, particularly in light of R156-38-204a(9), which allows the section to accept evidence submitted by a claimant where it has made reasonable efforts to obtain the necessary documentation.</u></p>
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YES	mam	05/07/98	<p>G. Owner or his tenant or lessee occupied the subject residence as a primary or secondary residence within 180 days from the date of completion of construction. (38-11-102(13)).</p> <p><u>Affidavit signed by owners Bryce and Cindy Whitaker state that the residence "is an owner-occupied residence within the meaning of the Residence Lien Restriction and Lien Recovery fund Act", and that they "do or will occupy the residence upon completion and that this residence is not offered for sale to the public." (Claim file, pp. 19-21). Although this affidavit fails to mention that exact date of completion of construction, and the date that the owners began occupying the premises, in order to not appear overly bureaucratic, we will not request new owner occupied affidavits from claimant.</u></p>
YES	mam	05/07/98	<p>H. If subsequent owner is involved, subsequent owner purchased residence from owner within 180 days from the date of completion of construction. (38-11-102(18))</p> <p><u>See note in G. that home is not offered for sale to public. There is no indication that a subsequent owner is involved.</u></p>
YES	mam	05/07/98	<p>I. Residence is a detached single family or duplex residence. (38-11-102(17))</p> <p><u>Claimant states the subject residence is a single family dwelling. (Claim file, p. 4). In addition, the Affidavit of Bryce and Cindy Whitaker state that their residence is a single-family dwelling. (Claim file, p. 20).</u></p>
YES	mam	05/07/98	<p>J. Contract between claimant and original contractor, subcontractor, or real estate developer was for qualified services. (38-11-204(3)(a)(i) and (c), 38-11-102(15))</p> <p><u>Claimant states that it "supplied building materials and supplies." (Claim file, p. 2).</u></p>

YES	mam	05/07/98	<p>K. Claimant obtained a judgment against the non-paying party, which judgment indicates that claimant is entitled to payment by the non-paying party under an agreement to perform qualified services and was not paid for the services, or was precluded from obtaining a judgment by the non-paying party's bankruptcy filing. (Note that the non-paying party can be an original contractor, a subcontractor or supplier who contracted with the original contractor, or a subcontractor or supplier who contracted with a subcontractor or supplier.) (38-11-204(3)(c) and (d)(ii))</p> <p><u>Claimant obtained a Default Judgment as to James D. Cannon, dba Cannon Construction, Only, filed on 12/2/97, in the total amount of \$33,395.14," with interest on the principal at 21% per annum, as provided by law, and interest on the remaining balance at 7.45% per annum, as provided by law, from the date of this Judgment until paid, plus after-accruing costs." The Judgment also grants reasonable costs and attorney's fees expended in collecting the Judgment as established by affidavit. (Claim file, pp. 30-31).</u></p>
YES	mam	05/07/98	<p>L. Claimant made a reasonable attempt to collect its judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing. (38-11-204(3)(d)(iii) and (iv))</p> <p><u>Claimant was precluded from collecting its judgment due to Cannon's bankruptcy filing on 1/13/98. (Claim file, p. 32)</u></p>
YES	mam	05/07/98	<p>M. Claimant is not entitled to reimbursement from another person. (38-11-204(3)(e))</p> <p><u>Claimant so certifies. (Claim file, p. 6)</u></p>
YES	mam	05/07/98	<p>N. There is adequate money in the Fund to pay the amount recommended. (38-11-203(1)(c)) (Current PTIF report)</p> <p><u>The current PTIF report reflects more than sufficient money to pay any amount that could be recommended on this claim.</u></p>

#### VI. Statutory Limitation on Claim Payment

Y/N	Inits	Date	
YES	mam	08/14/98	<b>There are no statutory limitations on the amount of payment.</b>

YES	mam	08/14/98	A. Amount of claims pending on this residence, as shown by previously filed notices of commencement of action, is less than or equal to \$75,000. (38-11-203(4)(a)(i)) <u>No other claims have been filed with the fund on the residence at issue.</u>			
YES	mam	08/14/98	B. Amount of money paid to claimant on prior claims plus amount to be paid on current claim is less than or equal to \$500,000. (38-11-203(4)(a)(ii)) <u>Anderson Lumber has thus far filed 35 claims. See table below</u> <u>This table shows that Claimant has not been paid \$500,000.00 on claims, and no amount that could be approved on this claim would bring its payments to that level.</u>			
LRF 1996-0807-01	Anderson Lumber	Mesa Contractors, LC	\$12,821.91	\$0.00	Denied	
LRF 1996-0807-02	Anderson Lumber	Mesa Contractors, LC	\$4,446.77	\$0.00	Denied	
LRF 1996-0807-03	Anderson Lumber	Mesa Contractors, LC	\$2,461.25	\$0.00	Denied	
LRF 1996-0821-01	Anderson Lumber	Douglas & David Bobo dba Caravelle Construction	\$5,543.68	\$4,805.38	Paid	
LRF 1996-1016-01	Anderson Lumber	Kelwood Davidson dba Progressive Home Builders	\$14,209.99	\$15,319.78	Paid	
LRF 1996-1016-02	Anderson Lumber	Kelwood Davidson dba Progressive Home Builders	\$20,560.53	\$21,754.17	Paid	
LRF 1996-1016-03	Anderson Lumber	Kelwood Davidson dba Progressive Home Builders	\$2,957.90	\$4,044.51	Paid	
LRF 1996-1223-01	Anderson Lumber	Robert J. Allred Construction	\$13,627.68	\$13,627.68	Paid	
LRF 1997-0610-01	Anderson Lumber	Jared Barlow Construction	\$6,440.35	\$0.00	Dismissed	
LRF 1997-0811-01	Anderson Lumber	Jeffrey Howcroft dba Country Cottages & Homes	\$45,267.51	\$30,159.05	Paid	
LRF 1998-0126-01	Anderson Lumber	James D. Cannon/Cannon Construction	\$13,202.17	\$12,266.55	Paid	
LRF 1998-0130-01	Anderson Lumber	Chad Black dba Blackstone Construction	\$24,299.51	\$24,304.56	Paid	
LRF 1998-0130-02	Anderson Lumber	James D. Cannon/Cannon Construction	\$34,130.44		Pending Board Review	
LRF 1998-0206-01	Anderson Lumber	Chad Black dba Blackstone Construction	\$15,457.15	\$16,341.24	Paid	
LRF 1998-0206-02	Anderson Lumber	Chad Black dba Blackstone Construction	\$11,255.45	\$11,838.59	Paid	

LRF 1998-0220-01	Anderson Lumber	Brent V. Peterson	\$21,066.28		Pending Conversion Order
LRF 1998-0615-02	Anderson Lumber Co	Prospector One LLC	\$11,119.34		Pending claimant response
LRF 1998-0622-02	Anderson Lumber Co.	Bill M. Nielsen	\$7,810.85	\$8,233.57	Paid
LRF 1998-0706-03	Anderson Lumber Co	Valley Wide Builders Inc	\$2,216.02	\$1,313.72	Paid
LRF 1998-0706-04	Anderson Lumber Co	Valley Wide Builders Inc	\$5,447.25	\$5,451.71	Paid
LRF 1998-0706-05	Anderson Lumber Co	Valley Wide Builders Inc	\$2,503.03	\$0.00	Denied
LRF 1998-0706-06	Anderson Lumber Co	Valley Wide Builders Inc	\$2,581.95	\$1,784.06	Paid
LRF 1998-0706-07	Anderson Lumber Co	Valley Wide Builders Inc	\$3,907.96	\$3,444.45	Paid
LRF 1998-0706-08	Anderson Lumber Co	Valley Wide Builders Inc	\$3,606.81	\$3,127.79	Paid
LRF 1998-0706-09	Anderson Lumber Co	Valley Wide Builders Inc	\$4,059.64	\$3,772.61	Paid
LRF 1998-0706-10	Anderson Lumber Co	Valley Wide Builders Inc	\$2,451.45	\$1,647.20	Paid
LRF 1998-0706-11	Anderson Lumber Co	Valley Wide Builders Inc	\$2,428.72	\$1,577.41	Paid
LRF 1998-0706-12	Anderson Lumber Co	Valley Wide Builders Inc	\$2,373.22	\$1,559.66	Paid
LRF 1998-0706-13	Anderson Lumber Co	Valley Wide Builders Inc	\$2,938.32	\$2,258.12	Paid
LRF 1998-0706-14	Anderson Lumber Co	Valley Wide Builders Inc	\$8,430.60	\$0.00	Dismissed
LRF 1998-0706-15	Anderson Lumber Co	Valley Wide Builders Inc	\$3,587.16	\$3,107.32	Paid
LRF 1998-0706-16	Anderson Lumber Co	Valley Wide Builders Inc	\$4,689.33	\$4,399.14	Paid
LRF 1998-0706-17	Anderson Lumber Co	Valley Wide Builders Inc	\$4,034.43	\$3,623.69	Paid
LRF 1998-0706-18	Anderson Lumber Co	Valley Wide Builders Inc	\$2,814.80	\$2,104.16	Paid
LRF 1998-0925-01	Anderson Lumber Co.	Valley Wide Builders Inc.	\$3,089.70	\$	Pending LRF Review
TOTAL			\$327,839.15	\$210,099.69	

## VII. Amount of Payment

### Informal Claims/Civil Judgment only on Subject Residence

A1.	B. CIVIL JMT AWARDS OR AMTS CLAIMED	C. AMOUNTS SUPPORTED BY EVIDENCE	D. DIFFERENCE (column C - column B = )	E1. EXPLANATION
2. PRINCIPAL OR QUALIFIED SERVICES	\$25,660.30	\$25,660.30	\$0.00	See Explanation E2 Below
3. PRE-JMT COSTS	\$187.50	\$187.50	\$0.00	See Explanation E3 Below
4. PRE-JMT ATTORNEY FEES	\$1,500.00	\$1,500.00	\$0.00	See Explanation E4 Below
5. PRE-JMT INTEREST	\$6,047.34	\$6,047.34	\$0.00	See Explanation E5 Below
6. POST-JMT COSTS	\$75.00	\$75.00	\$0.00	See Explanation E6 Below
7. POST-JMT ATTY FEES	\$3,300.00	\$3,300.00	\$0.00	See Explanation E7 Below
8. POST-JMT INTEREST	\$5,467.84	\$5,278.54	\$(189.30)	See Explanation E8 Below
9.  <b><u>TOTALS</u></b>	\$42,237.98	\$42,048.68	\$(189.30)	See Explanation E9 Below
10. PRE-JMT EXPENSES	\$7,734.84	\$7,734.84	\$0.00	
11. POST-JMT EXPENSES	\$8,842.84	\$8,653.54	\$(189.30)	

## EXPLANATION

E2 <u>Default Judgment awarded \$25,660.30 to claimant for qualified services. (Claim file, pp.30-31)</u>
E3 <u>Default Judgment awarded \$187.50 in costs to claimant. (Claim file, pp.30-31)</u>
E4 <u>Default Judgment awarded \$1,500.00 in attorneys fees to claimant. (Claim file, pp.30-31)</u>
E5 <u>Default Judgment awarded interest to date of judgment in the amount of \$6,047.34. (Claim file, pp. 30-31)</u>
E6 <u>Default Judgment provided that "Judgment shall be augmented in the amount of reasonable costs and attorney's fees expended in collecting the Judgment by execution or otherwise as shall be established by affidavit." (Claim file, pp. 30-31) Claimant has requested \$75 for LRF claim filing fee. (See Exhibit Q of Claimant's Statement of Points and Authorities in Support of Motion for Reconsideration by Presiding Officer.)</u>
E7 <u>Default Judgment provided that "Judgment shall be augmented in the amount of reasonable costs and attorney's fees expended in collecting the Judgment by execution or otherwise as shall be established by affidavit." (Claim file, pp. 30-31) Claimant has requested a total of \$3,300.00 in attorneys fees, and properly submitted affidavits in support of these fees. (Claim file, pp. 55-56, 62-64, and Exhibit P of Claimant's Statement of Points and Authorities in Support of Motion for Reconsideration by Presiding Officer.) (20% of the qualified services as allowed by rule would be <math>20\% \times \\$25,660.30 = \\$5,132.06</math>)</u>
E8 <u>The Civil judgment granted post-judgment interest "on the principal at the rate of 21% per annum, as provided by law, and interest on the remaining balance at 7.45 % per annum, as provided by law, from the date of this Judgment until paid." The date of the Civil Judgment was 12/2/97. Assuming this claim will be paid at the LRF Board Meeting on 10/21/98, 323 days will pass from the Judgment date until payment. The calculation of interest is shown in the table below, the Total post-judgment interest is \$5,278.54.</u>

## POST JUDGMENT INTEREST CALCULATION

POST JMT INT.	AMT	x % =	/ 365 DAYS = INTEREST PER DAY	NO. OF DAYS	x INT PER DAY = TOTAL INTEREST
21% apr on princip	\$25,660.30	\$5,388.6630	\$14.7634603	323	\$4,768.60
7.45% apr on bal.	\$7,734.84	\$576.2456	\$1.5787551	323	\$509.94
TOT	\$33,395.14				\$5,278.54

## VII. Demographic Data

Source: Claimant's Demographic Questionnaire.

<p>1. Type of business entity used by claimant:</p> <p> <input type="checkbox"/> Sole Proprietorship              <input type="checkbox"/> Partnership              <input type="checkbox"/> Joint Venture              <input checked="" type="checkbox"/> Corporation              <input type="checkbox"/> LLC              <input type="checkbox"/> Other         </p>
<p>2. Number of employees employed by claimant:</p> <p> <input type="checkbox"/> None    <input type="checkbox"/> 1-4    <input type="checkbox"/> 5-9    <input type="checkbox"/> 10-19    <input type="checkbox"/> 20-49    <input type="checkbox"/> 50-99    <input checked="" type="checkbox"/> 100+         </p>
<p>3. Claimant's gross annual revenue:</p> <p> <input type="checkbox"/> 0-\$9,000    <input type="checkbox"/> \$10,000-\$49,000    <input type="checkbox"/> \$50,000-\$99,000    <input type="checkbox"/> \$100,000-\$249,000    <input type="checkbox"/> \$250,000-\$499,000    <input type="checkbox"/> \$500,000-\$999,000    <input type="checkbox"/> \$1,000,000-\$4,999,000    <input checked="" type="checkbox"/> \$5,000,000+         </p>
<p>4. Number of years claimant has been in business:</p> <p> <input type="checkbox"/> 0-1    <input type="checkbox"/> 2-4    <input type="checkbox"/> 5-9    <input type="checkbox"/> 10-14    <input type="checkbox"/> 15-19    <input checked="" type="checkbox"/> 20+         </p>
<p>5. Capacity in which claimant is claiming:</p> <p> <input type="checkbox"/> General Contractor    <input type="checkbox"/> Subcontractor    <input checked="" type="checkbox"/> Supplier    <input type="checkbox"/> Other _____         </p>
<p>6. Is claimant licensed through DOPL?    <input checked="" type="checkbox"/> yes    <input type="checkbox"/> no</p>
<p>7. Type of business entity used by non-paying contractor or real estate developer, if known:</p> <p> <input checked="" type="checkbox"/> Sole Proprietorship    <input type="checkbox"/> Partnership    <input type="checkbox"/> Joint Venture    <input type="checkbox"/> Corporation    <input type="checkbox"/> LLC    <input type="checkbox"/> Unknown         </p>
<p>8. Number of employees employed by non-paying party, if known:</p> <p> <input type="checkbox"/> None    <input type="checkbox"/> 1-4    <input checked="" type="checkbox"/> 5-9    <input type="checkbox"/> 10-19    <input type="checkbox"/> 20-49    <input type="checkbox"/> 50-99    <input type="checkbox"/> 100+    <input type="checkbox"/> Unknown         </p>
<p>9. Non-paying party's gross annual revenue, if known:</p> <p> <input type="checkbox"/> 0-\$9,000    <input type="checkbox"/> \$10,000-\$49,000    <input type="checkbox"/> \$50,000-\$99,000    <input type="checkbox"/> \$100,000-\$249,000    <input type="checkbox"/> \$250,000-\$499,000    <input type="checkbox"/> \$500,000-\$999,000    <input type="checkbox"/> \$1,000,000-\$4,999,000    <input type="checkbox"/> \$5,000,000+    <input checked="" type="checkbox"/> Unknown         </p>
<p>10. Number of years non-paying party has been in business, if known:</p> <p> <input type="checkbox"/> 0-1    <input type="checkbox"/> 2-4    <input type="checkbox"/> 5-9    <input type="checkbox"/> 10-14    <input type="checkbox"/> 15-19    <input type="checkbox"/> 20+    <input checked="" type="checkbox"/> Unknown         </p>
<p>11. Is non-paying party licensed through DOPL?    <input type="checkbox"/> yes    <input type="checkbox"/> no    <input checked="" type="checkbox"/> Unknown</p>

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## MEMORANDUM

TO: FILE

FROM: MASUDA MEDCALF

DATE: 09/22/98

RE: LRF 1998-0130-02 and LRF 1998-0220-01

Clair Jaussi, counsel for claimant Anderson Lumber, has moved for conversion to formal hearing on both of these claims. The issues unresolved in both claims is payment in full. The non-paying parties in each of these claims filed for bankruptcy after claimant obtained a judgment. Jaussi's motions state that due to bankruptcy, he has been unable to get the affidavit of the non-paying party acknowledging payment in full. During a telephone conversation with me today, Jaussi clarified that the non-paying parties are unwilling to give the appropriate affidavits, because they are afraid that they will be charged with a felony for having been paid by the homeowner, but not paying the subcontractor. Jaussi will send a letter explaining this and referring us to the appropriate theft statute that causes the non-paying parties concern.

Jaussi further informed that he has made a motion to modify the judgments obtained against the non-paying parties to include a finding of payment in full. However, he has been informed that he would be in violation of the bankruptcy court. Jaussi will fax the appropriate court documents to us. He indicated a concern that LRF might have a similar reaction from the bankruptcy court if we were to try to convert this to a formal hearing and subpoena the non-paying parties for testimony.

Finally, Jaussi clarified his statement in LRF 1998-0130-02's Motion to Convert that the original contractor is not contesting payment in full. Jaussi said that he has checked the Bankruptcy file for Cannon's Schedule A and Schedule B listings, and Cannon has not mentioned the Whitakers (homeowners) as debtors.

**Minutes from Board Meeting Discussion**  
**Claim No. LRF-1998-0130-02**

**October 21, 1998**

This claim was filed in January of this year. Attorney Clair Jaussi had asked to subpoena witnesses, but decided against that. He has filed a Motion for Reconsideration by the Board, even though the section and the Board had not yet made a finding on the claim. Ms. Medcalf stated there were two issues arising from this claim. First, is payment to third parties and subcontractors considered "payment in full" as required by the Act? Secondly, is the evidence of payment by the owners to third parties and subcontractors in this claim sufficient to show all amounts required under the contract? The Board members said that they would consider payment by the homeowners directly to third parties and subcontractors as payment in full if the original contract required the original contractor to make those payments. However, Mr. Bankhead said that the Board would set a dangerous precedent to approve a claim by intuition. He suggested Ms. Medcalf do further research to determine if the amounts paid by the homeowners were the original contractor's responsibility. Mr. Bankhead moved to conditionally approve payment of the claim pending additional research by Ms. Medcalf. He also indicated that the Board would like an update. Mr. Zufelt seconded the motion. Mr. Larsen abstained from voting; his firm is representing the non-paying party in the bankruptcy proceeding, and he wanted to avoid a conflict of interest.

## MEMO

TO: FILE

FROM: MASUDA MEDCALF

DATE: NOVEMBER 19, 1998

RE: LRF #1998-0130-02, ANDERSON LUMBER V. JAMES D. CANNON

This claim was presented to the Board at the 10/21/98 Board meeting, with a recommendation of payment. It was pointed out to the Board that the question of full payment by the owner was a big problem in this case, and that Anderson Lumber's attorney had incurred a lot of attorney's fees attempting to obtain the evidence of full payment. Despite his efforts, there still remained some question as to whether payments made by the homeowner were made to subcontractors and suppliers, were payments that the original contractor was required to make under the original contract. The contract was for \$60,000, but only \$50,000 was paid directly to the contractor. The owners said the other \$10,000 (actually approximately \$13,000) was paid to the subcontractors and suppliers directly, and the owners felt this should be counted as payment in full. One problem was that there was no way of verifying if some of the individuals and companies had actually received the payments (eg. there were no invoices, or receipts from the laborers, no affidavits regarding payment in full for work done on the property). Another problem was that the contract was so brief that it could not be determined if the owner already had a duty to pay these individuals or companies, or if they paid them as part of the original contractor's duty. (If it was the responsibility of the contractor, then we can count the amount paid as part of the amounts paid to the original contractor).

The Board conditionally approved the claim, but asked that the section do additional research, such as speaking with the subcontractors paid by owners and the homeowner to determine whether the original contract required the homeowners to pay these subcontractors and laborers, or if James Cannon was supposed to do so. I contacted subcontractor Carling & Company, who informed that they never dealt with James Cannon, but always the homeowner. (Claim file, pp. 86-91). I then spoke with homeowner Cindy Whitaker, who said that when they entered into the contract with James Cannon, it was intended that some subcontractors would be paid by the owner, and some by James Cannon; but that all was counted as part of the original \$60,000 contract price. She further informed that James Cannon is her brother, and that Well Cannon and Chuck Cannon (employees of Cannon Construction and laborers on her home) were her father and uncle. I informed Mrs. Whitaker that the Board was not comfortable paying this claim without further evidence of full payment, and informed her that if it was not paid by the Fund, Anderson Lumber's counsel may then proceed to obtain payment through the lien on their home.

I discussed the additional information with AAG Tony Patterson, and we decided to

contact Mrs. Whitaker and ask her if she thought that her brother, James Cannon, would sign an affidavit regarding full payment. I then contacted Cindy Whitaker. She said that she would talk with him, and let me know in a few days. When I didn't hear back from Mrs. Whitaker, I called her, and she said she had not been able to prepare the affidavit, but said her brother would sign it. I called her back a week after that, explaining that I needed to obtain the required information about payment in full before the next Board meeting on 12/2/98. Mrs. Whitaker said that her brother has the affidavit, and she will follow up with him to make sure that he sends it to our office. We received the affidavit from James Cannon about two days later.

Today AAG Tony Patterson and I discussed the possibility of questions that could be raised by James Cannon's attorney regarding how the affidavit was obtained. We came to the decision that James Cannon had not made an appearance in any way in this claim, and neither he nor attorney Bill Thurman have provided us any indication that Cannon would not sign an affidavit regarding full payment. The only statements on that subject were from Clair Jaussi, counsel for Claimant. Jaussi's has informed that he was not able to get a full payment affidavit from James Cannon due to his bankruptcy filing, and that if subpoenaed to testify, Cannon will take the 5<sup>th</sup>. Furthermore, we simply asked Mrs. Whitaker if she thought her brother would sign an affidavit regarding full payment, and did so in order satisfy the Board's inquiries for payment of the claim.

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**OF THE DEPARTMENT OF COMMERCE**  
**OF THE STATE OF UTAH**

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IN THE MATTER OF THE LIEN RECOVERY : **ORDER**  
FUND CLAIM OF **ANDERSON LUMBER CO.**  
REGARDING THE CONSTRUCTION BY :  
**JAMES D. CANNON dba CANNON** : Claim No.LRF-1998-0130-02  
**CONSTRUCTION, BUILDERS, ON THE** :  
**RESIDENCE OF BRYCE and** :  
**CINDY WHITAKER** :

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The Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts, finds, pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1)(1998), that:

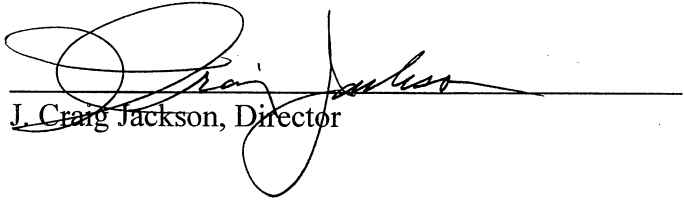
1. The claimant was a qualified beneficiary during the construction on a residence;
2. The claimant complied with the requirements of UTAH CODE ANN. § 38-11-204;  
and
3. There is adequate money in the fund to pay the amount ordered.

WHEREFORE, the Director of the Division of Occupational & Professional Licensing orders that the above-encaptioned claim is payable from the Residence Lien Recovery Fund, and that Claimant be paid \$25,660.30 for qualified services plus \$187.50 in pre-judgment costs, \$1,500.00 in pre-judgment attorney fees, and \$6,047.34 in pre-judgment interest \$75.00 in post-judgment costs, \$3,300.00 in post-judgment attorney fees, and \$5,278.54 in post-judgment interest, for a total claim of \$42,048.68.

The Director of the Division of Occupational and Professional Licensing also orders that

\$189.30 of the amounts claimed for post-judgment interest be denied, because claimant claimed more for these expenses than ordered in the civil judgment and/or allowed by rule.

DATED this 19<sup>th</sup> day of November, 1998.

  
J. Craig Jackson, Director

**CHALLENGE AFTER DENIAL OF CLAIM:**

Under the terms of UTAH ADMINISTRATIVE CODE, R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

MAILING CERTIFICATE

I hereby certify that on the 20 day of November, 1998, a true and correct copy of the foregoing Order was sent first class mail, postage prepaid, to the following:

ANDERSON LUMBER CO  
PO BOX 9459  
OGDEN UT 84409

Claimant

CLAIR J JAUSSE ESQ  
PO BOX 2282  
PROVO UT 84603

Counsel for Claimant

JAMES D CANNON  
dba CANNON CONSTRUCTION  
573 NORTH ADAMS AVENUE  
OGDEN UT 84404

Non-Paying Party

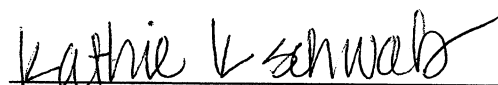
JAMES D CANNON  
dba CANNON CONSTRUCTION  
1136 12TH STREET  
OGDEN UT 84404

Non-Paying Party

BILL THURMAN ESQ  
McKAY BURTON & THURMAN  
600 GATEWAY TOWER EAST  
10 EAST SOUTH TEMPLE STREET  
SALT LAKE CITY UT 84133-1102

Counsel for Non-Paying Party

TONY PATTERSON  
ASSISTANT ATTORNEY GENERAL  
PO BOX 140872  
SALT LAKE CITY UT 84114-0872

  
\_\_\_\_\_  
Signature